IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Getsin et al.
Application No.:	09/489,597
Filed:	January 20, 2000
Title:	SYSTEM, METHOD AND ARTICLE OF MANUFACTURE FOR A CONFIGURATION MANAGER COMPONENT IN A MULTIMEDIA SYNCHRONIZATION FRAMEWORK
Group Art Unit:	2176
Examiner:	BASHORE, William L.
Customer No.:	22242
Conf. No.:	6029

Certificate of Transmission/Mailing

I hereby certify that this correspondence is being facsimile transmitted to the USPTO, transmitted via the Office electronic filing system, or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below:

Date: 11-29-07   /Steven M. Freeland/
Steven M. Freeland
Attorney for Applicants
Reg. No. 42,555

SUBSTITUTE APPEAL BRIEF

Mail Stop: APPEAL BRIEF - PATENT
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellants submit this appeal brief under 37 C.F.R. § 41.37 appealing the final rejection of Claims 1-18 in the Office Action mailed October 18, 2006.

(1) Real Party in Interest

The real party in interest is Sonic Solutions.

(2) Related Appeals and Interferences

No related appeals or interferences are known to Appellants.

(3) Status of Claims

Claims 1-18 were submitted for examination in the application filed on January 20, 2000.

Claims 1, 6-7, 12-13 and 18 were amended during prosecution.

Claims 1-18 were finally rejected in the October 18, 2006 final office action.

Claims 1-18 are appealed.

(4) Status of Amendments

No amendments have been filed subsequent to the final rejection mailed May 5, 2006.

(5) Summary of Claimed Subject Matter

Independent Claims Subject Matter Map

Receiving requests from each of the client apparatuses to simultaneously playback the event (enabled with, for example, a code segment or logic)	Claims 1, 7, 13
Identifying a type of the playback device of each of the client apparatuses (enabled with, for example, a code segment or logic)	Claims 1, 7, 13
Looking up a command associated with the identified type of the playback device (enabled with, for example, a code segment or logic)	Claims 1, 7, 13
Determining whether each request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event (enabled with, for example, a code segment or logic)	Claims 1, 7, 13
Sending the command to the corresponding client apparatus for initially beginning the playback of the event at the start time simultaneously with the playback of the event on each of the remaining client apparatuses for those requests received during the predefined threshold period, and sending the command to the corresponding client apparatus for beginning the simultaneous playback of the event simultaneously at a predetermined point during the playback for those requests not received during the threshold period (enabled with, for example, a code segment or logic)	Claims 1, 7, 13

A concise explanation of this subject matter appears as follows (with corresponding references to the specification by page and line number (or paragraph numbering where appropriate) and to the drawing(s) (if any) by figure number and reference characters.[1]
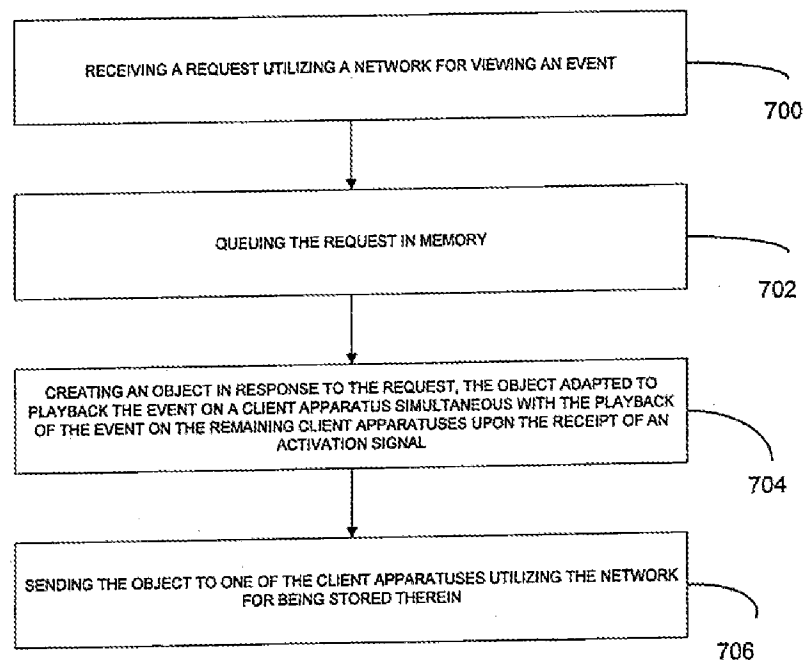
The claimed embodiments are directed to methods, computer programs and systems to provide simultaneous playback of events.[2] Further, these embodiments can further identify playback devices of a plurality of client apparatuses that are networked and effect simultaneous
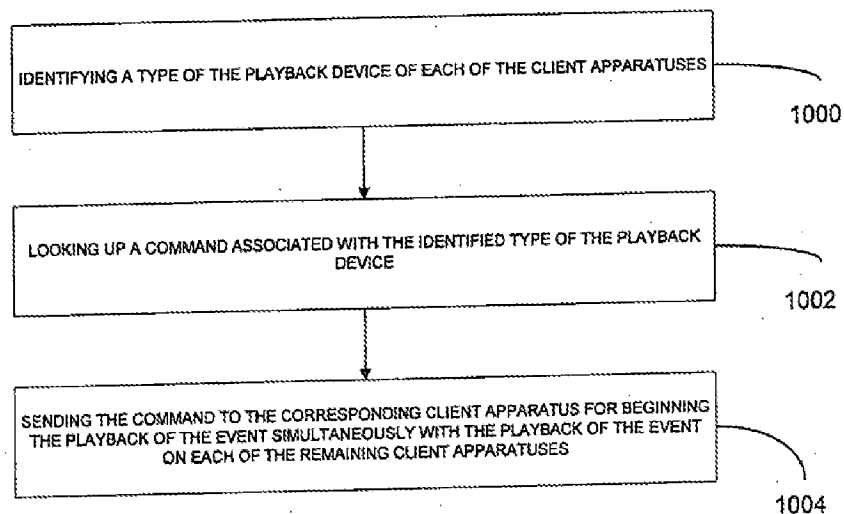
---

1 There are no specifc means plus function (or step plus function) recitations in any of the claims involved in this appeal, and thus, there is no identification of any corresponding structure, material, or acts in the specification in this regard. It will be understood that this summarization of the claimed subject matter is, in fact, a "summary" and that the Applicants do not represent or intend that this brief presentation, or the accompanying references to the drawings and the specification, comprises an exhaustive presentation in this regard. As always, the claims are to be viewed and interpreted in view of the context of the entire specification and the Abstract.

2 See at least App. pg. 7, lines 3-10; pg. 10, lines 3-15.

playback of an event at the client apparatuses. FIGS. 7 and 10 from the application appears

below for the convenience of the reader showing example processes of providing simultaneous

playback according to some embodiments:

Figure 7

IDENTIFYING A TYPE OF THE PLAYBACK DEVICE OF EACH OF THE CLIENT APPARATUSES

1000

LOOKING UP A COMMAND ASSOCIATED WITH THE IDENTIFIED TYPE OF THE PLAYBACK DEVICE

1002

SENDING THE COMMAND TO THE CORRESPONDING CLIENT APPARATUS FOR BEGINNING THE PLAYBACK OF THE EVENT SIMULTANEOUSLY WITH THE PLAYBACK OF THE EVENT ON EACH OF THE REMAINING CLIENT APPARATUSES

1004

Figure 10

More specifically, some embodiments provide methods that identify playback devices of client apparatuses that are networked to simultaneously playback an event[3] of client apparatuses requesting simultaneous playback[4]. A type of playback device is identified for each of the client apparatuses for which requests are received and commands associated with the identified type of the playback device are identified.[5] The received requests are evaluated to determine whether the request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event.[6] Further, the identified command is sent to the corresponding client apparatus for initially beginning the playback of the event at the start time simultaneously with the playback of the event on each of the remaining client apparatuses for those requests received during the predefined threshold period.[7] For

---

3 See at least App. FIGS. 3, 7 and 10; pg. 22, lines 20-32; pg. 29, lines 14-26.
4 See at least App. FIGS. 2-8 and 9; pg. 21, lines 24-33; pg. 23, lines 10-14; pg. 24, lines 10-24; pg. 28, lines 9-33; pg. 29, lines 14-26; pg. 32, lines 4-19; and pg. 36, lines 12-17.
5 See for example, App. FIGS. 3, 7 and 10; pg. 22, lines 9-12; pg. 22, lines 20-27; pg. 28, lines 9-32; pg. 29, lines 14-32; p. 31, lines 12-17; pg. 32, line 27 – pg. 33, line 6; and pg. 40, lines 5-16.
6 See at least App. FIGS. 5, 7-8 and 17; pg. 24, lines 10-26; pg. 29, line 14 – pg. 30, line 9; pg. 30, lines 13-32; pg. 31, line 12-17 and lines 22-32; and pg. 36, lines 6-17.
7 See at least App. FIGS. 2, 4-10, 17, 18; pg. 21, line 29 – pg. 22, line 16; pg. 23, lines 10-14; pg. 24, lines 10-14;

requests not received during the threshold period the identified command is sent to the corresponding client apparatus for beginning the simultaneous playback of the event simultaneously at a predetermined point during the playback.[8]

Below is a table providing a summarization of the description above and examples of supporting description within the specification. This representative table is, in fact, a "summary" and that the Appellants do not represent or intend that this brief presentation, or the accompanying references to the drawings and the specification, comprises an exhaustive presentation in this regard. As always, the claims are to be viewed and interpreted in view of the context of the entire specification and the Abstract.

Requests are received from the client apparatuses	See at least App. FIGS. 2-8 and 9; pg. 21, lines 24-33; pg. 23, lines 10-14; pg. 24, lines 10-24; pg. 28, lines 9-33; pg. 29, lines 14-26; pg. 32, lines 4-19; and pg. 36, lines 12-17
A type of playback device is identified for each of the client apparatuses and commands associated with the identified type of the playback device are identified	See for example, App. FIGS. 3, 7 and 10; pg. 22, lines 9-12; pg. 22, lines 20-27; pg. 28, lines 9-32; pg. 29, lines 14-32; p. 31, lines 12-17; pg. 32, line 27 – pg. 33, line 6; and pg. 40, lines 5-16
Requests are evaluated to determine whether the request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event	See at least App. FIGS. 5, 7-8 and 17; pg. 24, lines 10-26; pg. 29, line 14 – pg. 30, line 9; pg. 30, lines 13-32; pg. 31, line 12-17 and lines 22-32; and pg. 36, lines 6-17
Command is sent to the corresponding client apparatus for initially beginning the playback of the event at the start time simultaneously with the playback of the event on each of the remaining client apparatuses for those requests received during the predefined threshold period	See at least App. FIGS. 2, 4-10, 17, 18; pg. 21, line 29 – pg. 22, line 16; pg. 23, lines 10-14; pg. 24, lines 10-14; pg. 28, line 9 – pg. 29, line 10; pg. 29, line 20 – pg. 30, line 9; pg. 32, lines 4-23; pg. 32, line 27 – pg. 33, line 10; pg. 36, lines 6-17; pg. 39,lines 13-23; pg. 44, line 19 – pg. 45, line 27

---

pg. 28, line 9 – pg. 29, line 10; pg. 29, line 20 – pg. 30, line 9; pg. 32, lines 4-23; pg. 32, line 27 – pg. 33, line 10; pg. 36, lines 6-17; pg. 39,lines 13-23; pg. 44, line 19 – pg. 45, line 27.

8 See at least FIGS. 2, 4-10, 17, 18; pg. 21, line 29 – pg. 22, line 16; pg. 23, lines 10-14; pg. 24, lines 10-14; pg. 28, line 9 – pg. 29, line 10; pg. 29, line 20 – pg. 30, line 9; pg. 30, line 13 – pg. 31, line 32; pg. 33, line 8-17; pg. 47, line 12 – pg. 49, line 20.

For requests not received during the threshold period the identified command is sent to the corresponding client apparatus for beginning the simultaneous playback of the event simultaneously at a predetermined point during the playback	See at least FIGS. 2, 4-10, 17, 18; pg. 21, line 29 – pg. 22, line 16; pg. 23, lines 10-14; pg. 24, lines 10-14; pg. 28, line 9 – pg. 29, line 10; pg. 29, line 20 – pg. 30, line 9; pg. 30, line 13 – pg. 31, line 32; pg. 33, line 8-17; pg. 47, line 12 – pg. 49, line 20

Other embodiments provide computer programs embodied on computer readable mediums for identifying playback devices of a plurality of client apparatuses which are networked to simultaneously playback an event. These computer programs can include a code segment to receive requests from each of the client apparatuses to simultaneous playback the event.[9] Further code segments identify a type of the playback device of each of the client apparatuses and that look up a command associated with the identified type of the playback device.[10] A code segment is also provided that determines whether each request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event.[11] An additional code segment is provide to send the command to the corresponding client apparatus for initially beginning the playback of the event at the start time simultaneously with the playback of the event on each of the remaining client apparatuses for those requests received during the predefined threshold period.[12] Still further, code segments are provide that send the command to the corresponding client apparatus for beginning the simultaneous playback of the event simultaneously at a predetermined point during the playback for those requests not received during the threshold period.[13]

---

9 See at least App. FIGS. 2-8 and 9; pg. 21, lines 24-33; pg. 23, lines 10-14; pg. 24, lines 10-24; pg. 28, lines 9-33; pg. 29, lines 14-26; pg. 32, lines 4-19; and pg. 36, lines 12-17.
10 See for example, App. FIGS. 3, 7 and 10; pg. 22, lines 9-12; pg. 22, lines 20-27; pg. 28, lines 9-32; pg. 29, lines 14-32; p. 31, lines 12-17; pg. 32, line 27 – pg. 33, line 6; and pg. 40, lines 5-16.
  See at least App. FIGS. 5, 7-8 and 17; pg. 24, lines 10-26; pg. 29, line 14 – pg. 30, line 9; pg. 30, lines 13-32; pg. 31, line 12-17 and lines 22-32; and pg. 36, lines 6-17.
11 See at least App. FIGS. 5, 7-8 and 17; pg. 24, lines 10-26; pg. 29, line 14 – pg. 30, line 9; pg. 30, lines 13-32; pg. 31, line 12-17 and lines 22-32; and pg. 36, lines 6-17.
12 See at least App. FIGS. 2, 4-10, 17, 18; pg. 21, line 29 – pg. 22, line 16; pg. 23, lines 10-14; pg. 24, lines 10-14; pg. 28, line 9 – pg. 29, line 10; pg. 29, line 20 – pg. 30, line 9; pg. 32, lines 4-23; pg. 32, line 27 – pg. 33, line 10; pg. 36, lines 6-17; pg. 39,lines 13-23; pg. 44, line 19 – pg. 45, line 27.
13 See at least FIGS. 2, 4-10, 17, 18; pg. 21, line 29 – pg. 22, line 16; pg. 23, lines 10-14; pg. 24, lines 10-14; pg. 28, line 9 – pg. 29, line 10; pg. 29, line 20 – pg. 30, line 9; pg. 30, line 13 – pg. 31, line 32; pg. 33, line 8-17; pg. 47, line 12 – pg. 49, line 20.

Additionally or alternatively, some embodiments provide systems for identifying playback devices of a plurality of client apparatuses which are networked to simultaneously playback an event. These systems have logic to receive requests from client apparatuses to simultaneous playback the event.[14] Logic is also included that identify a type of the playback device of each of the client apparatuses, and logic is included to look up a command associated with the identified type of the playback device.[15] Further logic is provided to determine whether each request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event.[16] Logic to send the command to the corresponding client apparatus for initially beginning the playback of the event at the start time simultaneously with the playback of the event on each of the remaining client apparatuses for those requests received during the predefined threshold period is also included.[17] Additionally, logic is provided to send the command to the corresponding client apparatus for beginning the simultaneous playback of the event simultaneously at a predetermined point during the playback for those requests not received during the threshold period.[18]

---

14 See at least App. FIGS. 2-8 and 9; pg. 21, lines 24-33; pg. 23, lines 10-14; pg. 24, lines 10-24; pg. 28, lines 9-33; pg. 29, lines 14-26; pg. 32, lines 4-19; and pg. 36, lines 12-17.
15 See for example, App. FIGS. 3, 7 and 10; pg. 22, lines 9-12; pg. 22, lines 20-27; pg. 28, lines 9-32; pg. 29, lines 14-32; p. 31, lines 12-17; pg. 32, line 27 – pg. 33, line 6; and pg. 40, lines 5-16.
16 See at least App. FIGS. 5, 7-8 and 17; pg. 24, lines 10-26; pg. 29, line 14 – pg. 30, line 9; pg. 30, lines 13-32; pg. 31, line 12-17 and lines 22-32; and pg. 36, lines 6-17.
17 See at least App. FIGS. 2, 4-10, 17, 18; pg. 21, line 29 – pg. 22, line 16; pg. 23, lines 10-14; pg. 24, lines 10-14; pg. 28, line 9 – pg. 29, line 10; pg. 29, line 20 – pg. 30, line 9; pg. 32, lines 4-23; pg. 32, line 27 – pg. 33, line 10; pg. 36, lines 6-17; pg. 39,lines 13-23; pg. 44, line 19 – pg. 45, line 27.
18 See at least FIGS. 2, 4-10, 17, 18; pg. 21, line 29 – pg. 22, line 16; pg. 23, lines 10-14; pg. 24, lines 10-14; pg. 28, line 9 – pg. 29, line 10; pg. 29, line 20 – pg. 30, line 9; pg. 30, line 13 – pg. 31, line 32; pg. 33, line 8-17; pg. 47, line 12 – pg. 49, line 20.

(6) Grounds of Rejection to be Reviewed

The following issues are presented for review:

Issue 1: whether claims 1-18 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. U.S. Patent No. 6,161,132 to Roberts et al. (referred to below as the Roberts patent) in view of U.S. Patent No. 6,108,687 to Craig (referred to below as the Craig patent).

(7) Argument

The following arguments are presented to contest the grounds for rejection presented above.

Issue 1: Claims 1-18 are patentable over the Roberts patent in view of the Craig patent.

Claim 1

Claim 1 is rejected over the combination of the Roberts patent and Craig patent. This combination, however, fails to teach or suggest all of the limitations as recited in at least claim 1. More specifically, Applicants respectfully submit that the combination of Roberts and Craig fails to teach at least "determining whether each request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event" as recited in claim 1. The office action of October 18, 2006 states on page 5 that "Roberts does not specifically teach that received requests during its threshold period occur prior to 'a start time of initially beginning' the playback" and instead relies on the Craig patent. In attempting to equate the combination of Roberts and Craig to the claimed limitations, the office action specifically defines a "simultaneous playback of an event" as "the chat room" of Roberts (office action, page 3 and page 4). Therefore, according to the office action's interpretation of Roberts, the event is started when the chat room is started.

In relying on the Craig patent in attempting to show that the combination of Roberts and Craig describes receiving requests "prior to a start time of initially beginning the simultaneous playback of the event" the office action cites column 12, lines 7-21 of Craig where Craig describes what the office action refers to as an "'initiation' period" (office action, page 5). This "initiation" period described in Craig requires that "the user at the instructor workstation will preferably initiate the presentation some time in advance. This will allow students that attempt to connect to the presentation some window of time to establish their connections" (Craig, col. 12, lines 10-14, emphasis added). Therefore, according to Craig, participants must be able to establish their connections prior to a lecture. Roberts specifically requires that a chat room be started in response to a first user attempting to access the chat room and subsequent

users allowed to establish their connections and to join that already active chat room (see

Roberts, at least col. 7, lines 26-30). The combination of the "initiation" period of Craig with

Roberts would at best provide that participants of a chat room be able to establish their

connections with the active chat room prior to a lecture beginning. The office action requires

that the "chat room" is the simultaneous event (office action, see at least page 3 and also page 4).

As such, the "event" (the chat room) is started once a single request is received and subsequent

requests received are directed to the already started event (i.e., the existing chat room) where the

users could wait an "initiation" period for an instructor (according to Craig) to begin lecturing.

However, users are already actively participating in the "event" (the chat room) according to

Roberts and Craig, and the combination does not receive requests prior to the event and there

would be no reason to determine whether requests are received prior to the event (chat room)

because the chat room according to Roberts is started immediately upon receipt of the first

request.

The chat room must be active (at least according to Craig) to allow users to establish

their connections, and thus, would not determine whether requests are received prior to the

threshold period. Therefore, the combination of Roberts and Craig fails to teach receiving

requests prior to "a start time of initially beginning" the event, i.e., the chat room, and further

fails to teach or suggest "determining whether each request is received during a predefined

threshold period prior to a start time of initially beginning the simultaneous playback of the

event" as recited in claim 1.

The office action continues to suggest that the users of the chat room in Roberts could

be queued, relying on the "initiation" period of Craig. Combining Craig with Roberts, however,

would not result in users being queued up and waiting to join an event (i.e., the chat room).

Instead, at best, the combination would provide that a chat room must be activated and users

allowed to establish their connections with and to join the active chat room prior a lecture

beginning. Specifically, Roberts states that a first user activates a chat room and other users join

that chat room, and further Craig specifically states that the presentation "must be initiated…

some time in advance" (Craig, col. 12, lines 7-13), and thus, arguendo if one were to combine

Craig with Roberts the combination would at best require that the chat room be activated some

time in advance of the lecture to allow users to join the chat room prior to the lecture. Thus, even if you combine the Craig and Roberts patents, the combination fails to teach or suggest queuing participants prior to the start of the chat room of Roberts, and instead teaches away from queuing prior to starting the chat room because the chat room must be active (at least according to Craig) to allow users to establish their connections. Therefore, the combination fails to teach or suggest a threshold period prior to the beginning of an event and also fails to teach "determining whether each request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event" as recited in claim 1.

Applicants further respectfully submit that neither the Roberts patent nor the Craig patent teach at least looking up a command associated with the identified type of the playback device and sending the command to the corresponding client apparatuses as recited in at least claim 1. Instead, Roberts only describes sending or relaying generic commands to each chat client that are interpreted by a plug in on the clients to identify the command and implement an appropriate action. Nowhere does Roberts describe or teach looking up commands associated with the type of the playback device.

The Office Action mailed October 18, 2006 suggests that the Roberts patent describes identifying a type of the playback device stating that "Roberts teaches a command plug-in for aiding in the playing of a musical recording, said plug-in gathers information regarding the capabilities of the client's CD drive, therefore determining the type of drive" citing the Abstract and column 4, lines 1-16 of Roberts (office action, pg. 3). Column 4, lines 1-16 of Roberts describes a command plug-in that provides basic functions including getting "information regarding the capabilities of the CD drive." The Roberts patent, however, fails to discuss or suggest looking up a command associated with the identified type of playback device and sending the command to the corresponding client apparatuses as recited in claim 1. Getting information about the capabilities of a CD drive cannot be equated to looking up commands associated with identified types of playback devices and sending those commands to client apparatuses. Instead, Roberts only describes that a plug in that is stored and operated locally on the client device gets information regarding the capabilities of that CD drive. There is no

discussion or suggestion of looking up commands based on the type of playback device and sending that command to the playback device.

Further, Roberts only describes sending generic messages that are acted upon by the plug in, and does not teach or suggest sending a command associated with an identified type of playback device. Specifically, Roberts describes sending messages where "[c]ontrol actions result in the chat plug-in sending messages to the chat server which describe the control action being taken … the chat plug-ins running on the other users' machines, upon seeing a message of this kind, replicate the action (as far as possible) on the other users' machines by using the control plug-in" (Roberts, col. 8, lines 5-14). Therefore, the messages sent to the client apparatus and received by the chat client are generic messages that can be viewed and understood by all chat clients regardless of the type of device, and the command plug-in only locally causes the message to change the state of the playback device. The communication of generic messages is supported in that Roberts specifically states that it is "[a]n important advantage of the preferred embodiment … that it may be used with any chat server software which supports the minimal functionality …" (Roberts, col. 8, lines 31-33, emphasis added). The Craig patent also fails to teach or suggest identifying a type of the playback device, looking up a command associated with the playback device and sending the command to the client apparatus as recited in claim 1. Thus, claim 1 is not obvious over the applied combination.

The office action further contends on page 4 that it "would have been obvious … to apply the plug-in analyzing CD capabilities and controls, to Robert's chat room embodiment … providing Robert's the benefit of synchronization of audio CD devices with a wide array of different characteristics …." As described above, however, the Roberts patent describes sending generic messages that are utilized by the plug-ins to implement the commands. Roberts already describes coordinating playback on multiple client devices without the need of identifying the type of playback device. One skilled in the art would not add the complexity to Roberts to identify the playback device or use this information in identifying commands as Roberts already describes coordinating the playback through generic messages.

Furthermore, the combination of the Roberts and Craig patents fails to describe or suggest at least a predefined threshold period as recited in at least claim 1. The Office Action

suggests that "a predefined threshold period of acquisition can be defined as the time during the active participation of a chat room," as described in the Roberts patent (Office Action, pg. 3). However, the predefined threshold period recited in claim 1 is prior to the start time of initially beginning the simultaneous playback of the event, and therefore, cannot be equated with a time period after the simultaneous playback of the event, which the Office Action equates with the chat room described in Roberts, on any of the client devices. As such, "time during the active participation of a chat room" cannot be equated with the predefined threshold period as suggested by the Office Action.

Additionally, claim 1 does not simply recite a threshold period, but instead recites "a predefined threshold period prior to a start time of initially beginning the simultaneous playback." A "time during the active participation of said chat room" therefore, cannot be equated to the recited threshold period prior to a start time of an initial beginning of the playback because this period stated in the office action is after the start time of the playback.

The Office Action, in the alternative, suggests that "the predefined threshold period can also be interpreted as the time between initial communication of said identifier, and the ultimate starting point of the simultaneous playback of an event (the chat room)" citing the Roberts patent (Office Action, pg. 3). The Roberts patent describes that once a unique identifier is received, and the server is searched for a chat room, the name of the chat room is sent to the browser and the browser starts a chat client on a client device (see Roberts, col. 7, lines 15-30). The Office Action attempts to equate this period between the initial communication of said identifier and the ultimate starting point of the chat session, with the predefined threshold period as recited in at least claim 1. However, Roberts fails to teach or suggest making any type of determination relative to this suggested period whether requests are received. Instead, the only determination described in Roberts is whether a chat room is active when the request is received. There is no suggestion or motivation to make any determination relative to a time period from initially communicating an identifier and starting the chat room as Roberts specifically describes that "[i]f a chat room focused on the CD exists or can be created, the server responds with the name of that chat room, and the browser starts up a chat client on the user's computer as a client of that chat room," and any subsequent requests are directed to be clients of that chat room

(Roberts, col. 7, lines 26-30, emphasis added). Therefore, Roberts does not determine whether requests are received relative to the suggested period, and there is no motivation to make such a determination as a chat room is activated immediately upon receipt of a first request.

Further, there would be no benefit to comparing subsequent requests to this suggested period between initial communication of an identification from a first request and an activation of the chat room, because the chat room is active and all subsequent requests are associated with the already existing chat room. The period suggested in the office action is irrelevant to any subsequent requests because Roberts describes that the only determination relevant is whether the chat room is active or not. Therefore, the Roberts patent fails to teach or suggest determining whether requests are received prior to a predefined threshold period.

Still further, the period between initial communication and starting of the chat room cannot be equated with the predefined threshold as recited in at least claim 1. More specifically, the Office Action expressly states that "Roberts does not specifically teach that received requests during its threshold period occur prior to 'a start time of initially beginning' the playback", and instead relies on the Craig patent as teaching a predefined threshold period prior to a start time of initially beginning the playback as recited in claim 1 (Office Action, pg. 5). As such, at least neither of the time periods suggested by the office action relative to the Roberts patent, which the Office Action attempts to equate with the predefined threshold, can be equated to the predefined threshold period as claimed.

Additionally as introduce above, the office action attempts to equate a response time between an "initial communication of a CDs identifier, to the ultimate starting point of a chat room" to the claimed "predefined threshold period" (office action, page 4). However, this response cannot be defined as a predefined threshold period because it is simply a response time. Further, this response time is not a "predefined" period, but instead varies with every user depending on the connection of the users computer, internet traffic, website traffic, chat room traffic and other effects, and thus, is not a "predefined" period but completely varying based on response times and network traffic. Still further, there would be no motivation to make any determination of whether this request is received during this period because the request has

already been received and the connection is being made. Therefore, this period cannot be equated to the "predefined threshold period" as recited in claim 1.

Still further in rejecting claim 1, the Office Action contends that an "initiation period" described in the Craig patent (i.e., the time between the lecturer's initiation of presentation with a slide showing title and presentation start time until the lecturer begins speaking and selecting slides) can be equated to the predefined threshold as recited in claim 1 (Office Action, pg. 5). Specifically, the Office Action states that the combination of Craig with Roberts would allow Roberts "the benefit of allowing all participating users to experience a multimedia chat session in its entirety, for better understanding of a presentation, especially in an education setting" (Office Action, pg. 5). The suggested "initiation" period of Craig relied on in the Office Action allows users to connect to the lecture presentation prior to an instructor speaking (see at least Craig, col. 12, lines 7-16). However, such an initiation period as applied to Roberts would allow users to establish a connection with an already active "chat room," which is specifically intended to allow users to interact with each other. The "initiation" period of Craig requires that users connect with and join the chat room (i.e., the event according to the office action). Once users access a chat room they can communicate, including controlling the playback of a CD and/or otherwise interact as described in Roberts. It is the intended implementation of Roberts that the chat rooms of Roberts allow users to interact and participate in the experience (see at least Roberts, col. 1, lines 57-65). Even if one combined the "initiation" period of Craig with the chat room of Roberts, those users that access the chat room are <u>actively participating in the chat room event</u> and can control playback of the CD. These active users would be actively participating in the chat room and awaiting an "instructor" to begin lecturing. The chat room of Roberts does not restrict users from participating and instead teaches away from restricting users from participating as this would defeat the intended interactive and social aspect of the chat room. It would go directly against the intended implementation of Roberts to limit users from utilizing the chat room. Therefore, the combination fails to teach a threshold period as recited in claim 1.

Furthermore, combining Craig with Roberts would not result in users being queued up and waiting to join a chat room. Instead, at best, the combination would provide that a chat

room must be activated and users joined to the chat room prior a lecture beginning. Specifically, Roberts states that a first user activates a chat room and other users join that chat room, and further Craig specifically states that the presentation "must be initiated… some time in advance" to allow users to connect (Craig, col. 12, lines 7-13), and thus, if one tried to combine Craig with Roberts the combination at best would require that the chat room be activated some time in advance of the lecture and allow users to join the chat room. Thus, even if you combine the Craig and Roberts patents, the combination fails to teach or suggest queuing participants prior to the start of the chat room of Roberts. Therefore, the combination fails to teach or suggest a threshold period prior to the beginning of an event as recited in claim 1.

Additionally, the office action in combining Roberts with Craig suggests that Roberts could queue participates of a chat room. Roberts, however, teaches away from users being queued as this goes directly against the teachings of the Roberts patent in that Roberts specifically describes that a chat room (i.e., the event according to the office action) is initially activated upon a first user's request to join a chat room. The Roberts patent does not teach or suggest queuing up requests and instead specifically teaches away from such queuing because upon receipt of a first request a chat room is immediately started and other requests are allowed to join. For example, Roberts states "[i]f a chat room focused on the CD exists or can be created, the server responds with the name of the chat room, and the browser starts up a chat client … as a client of that chat room" (Roberts, col. 7, lines 26-30). Therefore, the Roberts patent describes starting a chat upon receipt of a first request and not queuing requests, and thus, there is no motivation to incorporate the period defined in Craig into the Roberts patent.

In response to Applicants' prior arguments, the Office Action states that "Roberts can ultimately begin a chat room with a plurality of devices queued up and waiting" (Office Action, pg. 7), and further argues that applying Craig to Roberts would provide "Roberts the benefit of allowing all participating users to experience multimedia chat session in its entirety (i.e., begging a simultaneous chat session in its entirety, for better understanding of a presentation, especially in an educational setting" (Office Action, pg. 8). However, the Craig patent requires that the presentation be initiated in advance to allow users to establish there connection (see at least Craig, col. 12, lines 7-12). When combined with the chat room of Roberts, this "initiation"

period at best would require that the chat room be activated in advance to allow users to join the chat room event prior to the lecture. Further, Roberts explains that when a request is received "[i]f a chat room focused on the CD exists or can be created, the server responds with the name of the chat room, and the browser starts up a chat client ... as a client of that chat room" (Roberts, col. 7, lines 26-30). Therefore, when a request is received, the user is given the name and can start as a chat client of the chat room, therefore, a user request can never be queued up and instead is either replied to with the name of the requested chat room, or is denied if the chat room does not exist or cannot be created (see Roberts, col. 7, lines 15-30). As such, the Roberts patent teaches away from queuing users and instead teaches replying to each user request as soon as it is received regardless of when such user request is received. As such, the combination of the Craig "initiation" period and the Roberts patent results in users actively participating in a chat room event and waiting for a user of the chat room to begin a lecture. Therefore, the combination of the Roberts patent with the Craig patent fails to teach each limitation as recited in claim 1.

Additionally, neither the Roberts patent nor the Craig patent describe or suggest making a determination regarding whether requests are received during a threshold period as claimed. Instead, both Roberts and Craig describe connecting users to the chat room or presentation in response to receiving requests and neither describes or suggests determining whether requests are received relative to any predefined threshold period. More specifically, the Roberts patent describes receiving requests and activating a chat room upon receipt of a first request associated with a CD or, where a requested chat room exists, joining requests to the active chat room stating that "[t]he server then employs the unique identifier to determine whether it has a chat room focused on the CD ... If a chat room focused on the CD exists or can be created, the server responds with the name of that chat room, and the browser starts up a chat client on the user's computer as a client of that chat room" (col. 7, lines 21-30). Therefore, neither the Roberts patent or the Craig patent describes making a determination whether requests are received during a predefined threshold period as claimed.

Further, the Roberts patent fails to suggest making a determination of when the requests are received relative to some time period or threshold. Specifically, when a user

connects by means of a browser to the "central Web page," the "central Web page" asks the user to insert the CD, after the user does so a unique identifier is computed and sent to the server, the server then uses the unique identifier to start up a chat client on the client device (Roberts, col. 7, lines 26-30). Where a chat session for the CD already exists or can be created, the Roberts patent fails to teach or suggest making any inquiry regarding what state the chat room is in (see at least Roberts, col. 7, lines 15-30). The server simply searches the database to determine whether a chat room exists or can be created and if a chat room exists or can be created the name of the chat room is sent to the browser which starts a chat client (see Roberts, col. 7, lines 26-30). Upon receiving the request, according to the Roberts patent, the user is simply provided with the name of the chat room and does not make any determination with regard to a specific time period or threshold and more specifically with respect to what state the chat room is in. The only determination Roberts makes upon receipt of a request to join a chat room is a determination of whether the chat room is active or can be created (Roberts, col. 7, lines 26-30). Upon making this determination, the Roberts patent simply responds with the name of the chat room, and the Roberts patent fails to describe or suggest any other determination or restriction before responding to the user request (see at least Roberts, col. 7, lines 15-30). There is no suggestion of determining whether the request is received within a threshold period. Once a request is received a unique identifier is computed, and the chat client starts a page.

The Office Action equates "the period of time between initial communication of each CD's identifier, and ultimate starting point of the simultaneous playback of an event (the chat room)" with the predefined threshold period as recited in at least claim 1. However, the Roberts patent fails to suggest making any determination regarding this period. Instead as described above, the only determination made is whether a chat room exists and can be created and the Roberts patent fails to describe or suggest that this determination in any way depends on whether the chat room has started or the state the chat room is in temporally (see at least Roberts, col. 7, lines 15-30). Additionally, Applicants respectfully submit that the Office Action fails to provide evidence that demonstrates that the Roberts patent describes or suggest a determination with regard to a predefined threshold as recited in claim 1.

Furthermore, Roberts teaches away from making any determination relative to a threshold of a start time because a first request immediately activates a chat room and no consideration is made relative to a start time, and all subsequent requests are immediately joined with the chat room regardless of when the chat is activated (see for example, Roberts, col. 7, lines 26-30). The Roberts patent specifically describes that as soon as a determination is made that the chat room exists or can be created, the server responds with the name of the chat room. Therefore, the Roberts patent does not teach or suggest making any determination of when requests are received relative to a start time.

Similarly, the Craig patent also fails to teach making any determination with regard to a predefined threshold as recited in at least claim 1. According to the Office Action, the suggested "initiation" period of the Craig patent is equated with the predefined threshold recited in at least claim 1 (see Office Action, pg. 4). However, the Craig patent fails to describe or suggest any determination being made with regard to the initiation period before connecting students or sending the lecture to the student. Craig describes two types of requests that can be received with respect to each lecture. The first is the Instructor server which initiates and ultimately starts the lecture. When an Instructor request is first received at the LectureServer, the server that is responsible for the coordinating the lecture, establishes a connection with the Instructor and "the main thread adds the new InstructorServer to the Hash table which represents all lecture sessions maintained by this server" (see at least Craig, col. 14, lines 47-55). The other type of request received is a student request. Upon receiving a student request for access to a lecture, the Hash table of all lectures is searched to determine if the requested lecture exists, then if the lecture exists the system will establish a connection between the student and the Instructor for that lecture and "[t]he new student is added to the Vector of currently connected students" (see Craig, col. 14, lines 62-67). Craig further describes that "[a]s the actual (human) Instructor changes slides, the Instructor applet 71 updates the LectureServer 77, which in turn updates all student session" (Craig, col. 10, lines 30-34). When sending these update messages to the student the LectureServer of Craig does not teach or suggest making any determination with respect to when the student request was received with respect to the "initiation" period. Instead, the only determination is whether the student is connected and added to the Vector of all

students. This determination cannot be equated to a determination about whether the request was received with respect to any threshold period and specifically whether the request was received before the starting of the lecture. The Craig patent fails to describe or suggest making any determination with respect to when a student lecture is received, instead regardless of when a student lecture is received, the LectureServer will only send the update message to those students connected (i.e., for which the connection process is completed). Upon receiving an update message from the InstructorServer the LectureServer sends the update command to all students connected (see at least Craig, col. 10, lines 27-34). According to Craig, if a request is received before playback begins but connection has not yet been established, then the student sending the request will not receive the first update message with the other students that are connected before the lecture begins. Instead, as soon as connection is established the number of the current slide being played is sent to the student at that time and not simultaneously with all other students whose requests were received before the first update message and for whom connection was completed before the first update message (see at least Craig, col. 10, lines 27-32, col. 12, lines 19-23 and col. 13, lines 62-67).

Even if one assumes, arguendo, that Craig describes a threshold period prior to a start time, the Craig patent fails to make any determination relative to this threshold period and how users are to be connected. Claim 1 not only recites that a determination is made for each user relative to the recited threshold period, but also that appropriate action be taken according to such a determination. Specifically, claim 1 provides that commands are sent to those client apparatuses "for initially beginning the playback of the event at the start time simultaneously with the playback of the event on each of the remaining client apparatuses for those requests received during the predefined threshold period" and continues to recite that for those requests from client apparatuses that are not received during the threshold period that commands are sent "for beginning the simultaneous playback of the event simultaneously at a predetermined point during the playback." More specifically, Craig describes that regardless of when a student sends the request to be connected to the lecture, communication must be established before the student can join the lecture. Therefore, even if a student request is received before the instructor starts the lecture the student will not receive an update message to start the lecture until and unless

connection is established. Thus, the Craig patent fails to teach or suggest making such a determination, and further does not teach or suggest sending different commands in response to the determination.

Further, there is no motivation to incorporate any type of determination in that the Craig patent is attempting to allow users to access lectures and does not care when students join the lecture. The Craig patent describes simply starting the lecture at the time the instructor wishes to start. The purpose of the suggested "initiation period" is to "allow students that attempt to connect to the presentation some window of time to establish their connection" (see Craig, col. 12, lines 7-14). The Craig patent specifically states that the lecture begins when "the user at the instructor workstation begins speaking and selecting slides" (see Craig, col. 12, lines 14-16). Therefore, it is irrelevant when student requests are received, the first update message is sent only to those students that have actually established their connection at the time the lecture begins and there is no determination of whether the requests were received prior to the starting of the lecture. As such, the Craig patent fails to teach or suggest at least "determining whether each request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event" as recited in claim 1, or taking appropriate action in response to the determination made.

Therefore, the combination of Roberts and Craig fails to teach or suggest at least "determining whether each request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event" as recited in claim 1, and further fails to teach or suggest taking appropriate action in response to the determination made as recited in claim 1. The combination of applied references fails to teach each limitation as recited in claim 1, and thus, a *prima facie* case of obviousness has not been established.

Furthermore, because the chat room is activated at a first request according to Roberts, Roberts teaches away from sending commands to a plurality of client apparatuses to "initially [begin] the playback of the event at the start time simultaneously with the playback of the event on each of the remaining client apparatuses for those requests received during the predefined threshold period" as recited in claim 1. Instead, the Roberts patent only initially starts the chat room for a first requesting client device, and all other requesting client devices

join during the chat room session. Therefore, the Roberts patent also fails to teach at least the "sending [of] the command to the corresponding client apparatus for initially beginning the playback of the event at the start time simultaneously with the playback of the event on each of the remaining client apparatuses for those requests received during the predefined threshold period" as recited in claim 1, and thus, claim 1 is not obvious in view of the Roberts patent.

Still further, one skilled in the art would not combine the Craig patent with the Roberts patent as this would defeat the intended purpose of the Roberts patent. MPEP section 2143.01(V) states that "[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." Regarding the Roberts patent, it is the intended purpose of the chat room provided by Roberts to allow the users to participate in an interactive experience where the users take part in a "complementary entertainment to be meaningfully interactive for the consumer, such that the consumer can also be a creator of the experience" (Roberts, col. 1, lines 63-65). Alternatively, the Craig patent describes a lecture system where only a single user (i.e., the instructor) can control the content. Therefore, one skilled in the art would not combine the Craig patent with the Roberts patent as this would restrict the chat room to be controlled by a single user (the lecturer) and would thus make it unsatisfactory for and defeat the intended purpose of the Roberts patent in providing an interactive experience for the users where the users are the creators of the experience.

Claim 7 and 13

With regard to claim 7 and 13, as demonstrated above, the combination of the Roberts patent and the Craig patent fail to teach at least code and/or logic that evaluate a predefined threshold period as recited. Claims 7 and 13 recite language similar to that of claim 1 at least with respect to "a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event." The Office Action rejects claims 7 and 13 based on the same reasoning as presented for claim 1. Applicants respectfully submit that claims 7 and 13 are not obvious over the combination of the above references at least for the same reasons as described with respect to claim 1.

More specifically the Office Action states that the Roberts patent describes a
predefined threshold and states, "a predefined threshold period of acquisition can be defined as
the time during the active participation of said chat room," and alternatively asserts, "the
predefined threshold period can also be interpreted as the time between initial communication of
said identifier, and the ultimate starting point of the simultaneous playback of an event (the chat
room)" (Office Action, pg. 3). However, as described above with respect to claim 1, neither of
the periods associated with the Roberts patent and suggested by the Office Action can be equated
with a predefined threshold period prior to a start time of initially beginning the simultaneous
playback of the event, or code segments and/or logic for determining whether each request is
received during a predefined threshold as recited in claims 7 and 13. More specifically, the time
during the active participation of said chat room is not prior to a start time of initially beginning
the simultaneous playback of the event in Roberts (the chat room). Further, the time between
initial communication of the CD identifier and the ultimate starting point of the simultaneous
playback of the chat room cannot be equated with the predefined threshold period, for at least the
same reasons as described above with respect to claim 1.

The Office Action also suggests in reference to the Craig patent that the time between
the "initiation of a presentation with a slide showing title and presentation start time" can be
equated with the predefined threshold period. However, at least for the reasons described above
with regard to claim 1 this period cannot be equated with the predefined threshold period as
recited in claims 7 and 13, and neither Craig nor Roberts describes code segments and/or logic
for determining whether each request is received during the predefined threshold as recited in
claims 7 and 13. Therefore, the combination of the Craig patent and the Roberts patent fails to
describe or suggest at least a predefined threshold period prior to a start time of initially
beginning the simultaneous play back of the event or code segments and/or logic for determining
whether each request is received during the predefined threshold as recited in claims 7 and 13.

Furthermore, neither the Roberts patent nor the Craig patent describe or suggest code
segments and/or logic for making a determination based on the predefined threshold period as
recited in claims 7 and 13 at least for the same reasons as described above with respect to claim
1. More specifically, neither of the applied references describes code or logic to make a

determination regarding the time at which a request by a client is made before initiating a chat session (Roberts) or a lecture session (Craig). Moreover, the Roberts patent teaches away from such a determination since the Roberts patent describes starting a chat room upon receipt of a first request, and teaches away from queuing users before starting a chat session, and instead describes that upon receiving a chat request a chat client is created on the user device. As such the combination of the Craig and Roberts patent fails to teach all of the limitations at least with respect to claims 7 and 13, and therefore, the above combination fails to render at least claims 7 and 13 obvious.

(8) Claims Appendix

Provided is a complete listing of all the pending claims involved with this appeal:

Claim 1: A method for identifying playback devices of a plurality of client apparatuses which are networked to simultaneously playback an event, comprising the steps of:

receiving requests from each of the client apparatuses to simultaneously playback the event;

identifying a type of the playback device of each of the client apparatuses;

looking up a command associated with the identified type of the playback device;

determining whether each request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event; and

sending the command to the corresponding client apparatus for initially beginning the playback of the event at the start time simultaneously with the playback of the event on each of the remaining client apparatuses for those requests received during the predefined threshold period, and sending the command to the corresponding client apparatus for beginning the simultaneous playback of the event simultaneously at a predetermined point during the playback for those requests not received during the threshold period.

Claim 2: A method as recited in claim 1, wherein the event includes a video and audio presentation.

Claim 3: A method as recited in claim 1, wherein the type of the playback device is identified utilizing the network.

Claim 4: A method as recited in claim 1, wherein the network is a wide area network.

Claim 5: A method as recited in claim 1, and further comprising the step of storing on the client apparatus an identifier of a host server that sent the command.

Claim 6: A method as recited in claim 1 further comprising playing a digital video disc (DVD) during the event.

Claim 7: A computer program embodied on a computer readable medium for identifying playback devices of a plurality of client apparatuses which are networked to simultaneously playback an event, comprising:

a code segment for receiving requests from each of the client apparatuses to simultaneous playback the event;

a code segment for identifying a type of the playback device of each of the client apparatuses;

a code segment for looking up a command associated with the identified type of the playback device;

a code segment for determining whether each request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event; and

a code segment for sending the command to the corresponding client apparatus for initially beginning the playback of the event at the start time simultaneously with the playback of the event on each of the remaining client apparatuses for those requests received during the predefined threshold period, and sending the command to the corresponding client apparatus for beginning the simultaneous playback of the event simultaneously at a predetermined point during the playback for those requests not received during the threshold period.

Claim 8: A computer program as recited in claim 7, wherein the event includes a video and audio presentation.

Claim 9: A computer program as recited in claim 7, wherein the type of the playback device is identified utilizing the network.

Claim 10: A computer program as recited in claim 7, wherein the network is a wide area network.

Claim 11: A computer program as recited in claim 7, and further comprising a code segment for storing on the client apparatus an identifier of a host server that sent the command.

Claim 12: A computer program as recited in claim 7 further comprising a code segment for playing a digital video disc (DVD) during the event.

Claim 13: A system for identifying playback devices of a plurality of client apparatuses which are networked to simultaneously playback an event, comprising:

logic for receiving requests from each of the client apparatuses to simultaneous playback the event;

logic for identifying a type of the playback device of each of the client apparatuses;

logic for looking up a command associated with the identified type of the playback device;

logic for determining whether each request is received during a predefined threshold period prior to a start time of initially beginning the simultaneous playback of the event; and

logic for sending the command to the corresponding client apparatus for initially beginning the playback of the event at the start time simultaneously with the playback of the event on each of the remaining client apparatuses for those requests received during the predefined threshold period, and sending the command to the corresponding client apparatus for beginning the simultaneous playback of the event simultaneously at a predetermined point during the playback for those requests not received during the threshold period.

Claim 14: A system as recited in claim 13, wherein the event includes a video and audio presentation.

Claim 15: A system as recited in claim 13, wherein the type of the playback device is identified utilizing the network.

Claim 16: A system as recited in claim 13, wherein the network is a wide area network.

Claim 17: A system as recited in claim 13, and further comprising logic for storing on the client apparatus an identifier of a host server that sent the command.

Claim 18: A system as recited in claim 13 further comprising logic for playing a digital video disc (DVD) during the event.

(9) Evidence Appendix

None

(10) Related Proceedings Appendix

None

<u>CONCLUSION</u>

Appellants submit that the rejections of the pending claims 1-18 are in err, and that claims 1-18 are patentable over the applied combinations of references.

Appellants respectfully request a reversal of the final rejection.

Dated: <u>Nov. 29, 2007</u>   Respectfully submitted,

                                                  <u>/Steven M. Freeland/</u>

                                                  Steven M. Freeland
                                                  Reg. No. 42,555
                                                  Attorney for Applicants

<u>Address all correspondence to:</u>
FITCH, EVEN, TABIN & FLANNERY
Thomas F. Lebens
120 So. LaSalle Street, Ste. 1600
Chicago, IL 60603
(858) 552-1311

496109_1 (68625SubAppealBrief_2)